

116. (New) The computer program product of claim 115 wherein the second providing step includes the step of providing a cause value and an address of an associated message corresponding to the attempted communications session.

117. (New) The computer program product of claim 116 wherein the step of providing the cause value includes the step of providing an address for accessing the message in an alternate language.

118. (New) The computer program product of claim 115 wherein the second providing step includes the step of providing the treatment with the message.

119. (New) The computer program product of claim 115 wherein the providing step includes providing the indication of a particular version of the treatment.

120. (New) The computer program product of claim 119 wherein the providing step includes providing a multimedia version of the treatment.

REMARKS

The Applicant appreciates the Examiner's thorough examination of the subject application and requests reexamination and reconsideration in view of the preceding Amendments and the following remarks.

The Applicant has cancelled the amended claims and added new claims 61-120 to effectively re-instate the original claims as filed. A clean version appears in attachment A.

The Examiner rejected original claims 1, 6, 10, 40, 46 and 55 as being anticipated by Kelly.

Anticipation requires identity of invention. The claimed invention, as described in appropriately construed claims, must be the same as that of the reference in order to anticipate. The reference must describe the Applicant's invention sufficiently to have placed a person of ordinary skill in the field of the invention in possession of it.

Glaverbel Societe Anonyme v. Northlake Marketing & Supply, Inc., 33 USPQ 1496, 1948 (CAFC 1995).

The claimed invention recites an apparatus for receiving treatments corresponding to a calling party's unsuccessful attempt to complete a communications session having means for attempting to initiate a communications session from a calling party's communications device to a called party's communications device, means for receiving an indication that the attempted communications session was not completed and receiving means for receiving at the calling party's communications device a message providing an indication of a treatment corresponding to the attempted communications session.

It is incumbent upon the Examiner to identify wherein each and every facet of the claimed invention is disclosed in the applied reference. Ex Parte Levy, 17 USPQ2d 1461, 1463 (Bd. App. 1990) citing Lindemann Maschinefabrik Gmb/H v. American Hoist

and Derrick, 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984).

The Examiner relies on column 8, lines 50-52 as teaching the recited receiving means that receives a message providing an indication of a treatment corresponding to the attempted communications session. However, column 8, lines 50 –52 teach:

“If the call is accepted a communication session is established directly between the caller and the callee, without intervention of the connection/information server.”

This passage clearly does not teach the claimed receiving means.

The Examiner further identifies server 242 from Figure 2B. However, merely identifying the server, without more, does not satisfy the requirements of anticipation. An anticipating reference must describe the [claimed] subject matter with sufficient clarity and detail to establish that the subject matter existed and that its existence was recognized by persons of ordinary skill in the field of the invention. ATD Corp. v. Lyndall, Inc., 48 USPQ2d 1328 (CAFC 1998). The Examiner has pointed to no such description.

Accordingly, the rejection under 35 USC §102 is not proper, as it is clear that Kelly does not teach the invention as claimed and thus does not anticipate the claimed invention. The Examiner has pointed to no teaching of a receiving means for receiving at a calling party's communications device a message providing an indication of a treatment corresponding to the attempted communications session as claimed. Indeed, nowhere has the Examiner identified where Kelly even teaches sending a message providing an indication of a treatment, let alone receiving such a message.

Thus, Kelly does not anticipate the claimed invention and claims 1, 6, 10, 40, 46 and 55 are therefore patentable.

Claims 16, 13, 20, 25, 28, 31, 36, 43, 51 and 58 stand rejected under 35 USC §103 as being obvious over Roach et al. in view of Kelly.

To merely assert that the two references relate to communications sessions, as the Examiner does, is not sufficient motivation to combine the two references. Indeed, Roach et al. teach sending a data message without establishing a telephone connection (column 2, lines 13-16) and further teaches ensuring that the telephone call on the selected telephone line is not answered by the second party (column 2, lines 60-64) while Kelly teaches a communications session directly between the caller and the callee (column 8, lines 50-52). Thus, the two references teach away from the proposed combination.

In any event, as pointed out above, Kelly does not teach the recited receiving means that receives a message providing an indication of a treatment corresponding to the attempted communications session. Thus, the combination of Roach et al. and Kelly still does not produce the claimed invention.

Accordingly, claims 16, 13, 20, 25, 28, 31, 36, 43, 51 and 58 are not obvious and are therefore patentable.

Claims 53-55, 59 and 60 stand rejected under 35 USC §102 as being anticipated by Kasiviswanathan.

Kasiviswanathan teaches a telecommunications system and method for a caller to directly forward a call to a callee's voice mail without disturbing the callee using

Direct Voice Mail Access. Column 3, lines 6-12; column 4, line 7-10.

Accordingly, because the caller is actively not attempting to initiate a communications session between a calling party's communication device and a called party's communication device, there can be no anticipation of receiving an attempt to initiate a communications session from a calling party's communications device to a called party's communications device as claimed by Applicant. (Indeed, voice mail access would be a treatment in response to an unsuccessful attempt.)

Moreover, as there is no "attempt " to call the second party's communication device, Kasiviswanathan cannot provide an indication that the attempted communications session was not completed. It was never attempted.

The Examiner cannot properly equate the voice mail server of Kasiviswanathan with the communication device claimed by Applicant. Applicant's claims must be read in light of the specification. See, for example, page 4, lines 12-17, where Applicant defines a communications device. See also Figure 1A where a communications device is represented by blocks 104, 106, 108, 110, 112 and 114 while voice mail server is represented by blocks 116 and 119. A voice mail server is not a communications device.

Anticipation requires identity of invention, as restated above. Clearly there is no identity of invention here as there is no intent of Kasiviswanathan to even establish a communication session with a called party's communication device as claimed.


Finally, there can be no message providing an indication of a treatment corresponding to the attempted communications session as claimed, since

Kasiviswanathan never attempts a "communications session". Kasiviswanathan's call is intended for the voice mail server which is not a called party's communication device, as discussed above.

Accordingly, Kasiviswanathan does not anticipate the claimed invention as there is no identity of invention and claims 53-55, 59 and 60 are patentable.

Each of the Examiner's rejections has been addressed or traversed. Accordingly, Applicant asserts that the subject application is now in condition for allowance. Early and favorable action is respectfully requested.

Respectfully submitted,



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